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IN THE

# Supreme Court of the United States

OCTOBER TERM 1956

No. 348

JOSEPH S. GRIMES, *Petitioner*,

v.

MARYLAND STATE FAIR, INCORPORATED, *Respondent*.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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*To the Honorable, Chief Justice and the Associate Justices of the Supreme Court of the United States.*

The petitioner, and appellant below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above cause on March 1, 1956 (R. 10)

### OPINIONS BELOW

The United States District Court for the District of Columbia rendered judgment in this cause on May 17, 1955, and ordered that the motion of defendant to quash service be granted and that the summons issued on April 7, 1955

against defendant, and the return made thereon, be quashed; and the plaintiff's motion to dismiss defendant's motion to quash service of summons be denied. The order is set forth on page 6 of the record, and the petition for rehearing was denied on June 10, 1956. The order is set forth on page 9 of the record.

The opinion of the United States Court of Appeals for the District of Columbia Circuit is set forth on page 10 of the record.

## JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on March 1, 1956 (R. 10) and the petition for rehearing, en banc, was denied on March 26, 1956 (R. 24).

The jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Title 28, Sec. 1391, Chapter 87, of the United States Code Annotated.

## QUESTIONS PRESENTED

First, whether service on a director of a foreign corporation, whose residence and office is in the District of Columbia, can be made effective enough to bring said corporation under the jurisdiction of the United States District Court for the District of Columbia when plaintiff deems the actions of the foreign corporation and its director sufficient to denote that it is doing business in the District of Columbia.

Second, whether a resident of the District of Columbia, as a paying invitee to the place of business of the foreign corporation, when injured while on the premises of the foreign corporation, can file suit to recover for those injuries, in the District of Columbia, when he finds the foreign corporation actively doing business in the District of

Columbia. And third, did the Court below err in not allowing the plaintiff to offer proof that the foreign corporation was doing business in the District of Columbia, after the defendant filed an affidavit denying that it was under the jurisdiction of the United States District Court for the District of Columbia.

## STATUTES INVOLVED

The pertinent statutes are hereinafter discussed in the argument, and are also set out fully in the Appendix to this Argument and Brief. This being an equity action bound so tightly with the public interest that unless it is determined that a resident of the District of Columbia has a right to sue a foreign corporation found to be doing business in the District of Columbia for a tort committed to the resident of the District in the foreign corporation's home state, after being enticed, invited, and solicited to come into the foreign corporation's home situs,—a resident of the District of Columbia will be denied justice and the same foreign corporation will escape responsibility for a wrong it ought to be held responsible for, under the D. C. Code, Title 13, Sec. 301 (1951 edition).

## STATEMENT OF FACTS

The petitioner, an adult citizen of the United States and a resident of the District of Columbia as well as being a citizen thereof on April 12, 1952, at the invitation of the respondent through the daily press, radio and television, went to the respondent's race track at Laurel, Maryland where he sustained severe and permanent injuries as a result of the negligence and carelessness of the respondent in not cleaning the premises properly, causing your petitioner to slip on an uneaten frankfurter and to sustain a fractured right leg. This injury was the source of great pain and suffering as well as an expense due to needed medical treatment and loss of earnings in the sum of $25,000.00.

The petitioner further complained that the treatment afforded him at the track was negligent and careless and despite several efforts to have the respondent to accord him some relief, it was refused.

Therefore the petitioner filed Civil Action 1574-55 in the United States District Court for the District of Columbia on April 7, 1955 with service being made on one George Garrett, a director of the respondent corporation, residing in the District of Columbia and maintaining offices too in the District of Columbia.

On April 29, 1955, respondent filed a motion to quash service of process maintaining that the corporation at the time of service on its director, was not doing business in the District of Columbia within the contemplation of Title 13, Sec. 103, Pages 459 and 460 of the District Code, 1951 edition, providing for service on foreign corporations. The motion had attached to it, the affidavit of one Frank J. Brady, Treasurer of the Corporation spelling out the aforementioned fact (R. 27).

On May 4, 1955, your petitioner, through counsel, filed a motion to dismiss the defendant's motion to quash service of process, noting that (1) the jurisdiction of the Court was invoked because this was a controversy between citizens of different states, (2) because of the diversity of citizenship between the parties, it would be in the interest of justice to have the Court hear the case on its merits and not allow the respondent to hide behind a technicality in order to avoid being made liable for a wrong committed to the petitioner, and (3) petitioner advised the Court that it was prepared to prove at a hearing that defendant corporation was doing business in the District of Columbia through various and sundry methods and that said defendant corporation paid for services rendered unto it here in the District of Columbia solely for the purpose of securing revenue from District of Columbia residents, and by reference, revenue from the petitioner, and finally (4) because

the respondent's own affidavit describing Mr. Garrett's capacity as a director, in the thinking of the petitioner, made him, the said Mr. Garrett, eligible to be served and served properly enough to cause the Court to have jurisdiction over both the subject matter and the parties.

On May 17, 1956, the District Court entered an order wherein the summons and service made on the respondent's director was to be quashed and the petitioner's motion to dismiss the respondent's motion to quash, was denied.

On May 23, 1956, the petitioner filed a motion for rehearing, in which he prayed for a hearing at the earliest possible date.

On May 27, 1956 the respondent filed a memorandum of points and authorities in opposition to plaintiff's motion for rehearing, and on June 10, 1956 the Court issued a formal order denying the petitioner's motion for rehearing.

That was all that the petitioner was allowed to do in the District Court until he appealed his cause in the United States Court of Appeals for the District of Columbia Circuit on October 25, 1955. The decision of the lower Court was affirmed on March 1, 1956, and the petition for rehearing en banc was denied on March 26, 1956.

## SPECIFICATIONS OF THE ERRORS TO BE URGED

That the United States Court of Appeals for the District of Columbia Circuit erred in its ruling that the Plaintiff did not make a sufficient showing that the defendant corporation was doing business in the District of Columbia and that service on its director, as its agent, was amenable to service under Title 13, Sec. 103 of the D. C. Code, 1951 ed., "even if all of the allegations of fact made by the plaintiff were assumed to be true," and that the Court further erred in holding that the District Court was correct in its actions based on the record made at the hearing, especially since plaintiff was not allowed the opportunity

to put on proof of his contention that the foreign corporation "was doing business" in the District of Columbia.

By acting in the manner noted above, the Court erred, since the action taken was arbitrary, and as such, constituted an abuse of the petitioner's rights under the Constitution of the United States, by being deprived of a property right without due process of law.

## REASONS FOR GRANTING THE WRIT

The petitioner asserts that a writ or certiorari should be granted in this cause under subdivision 5 of Rule 38 of this Honorable Court because the United States Court of Appeals for the District of Columbia Circuit has rendered a decision in conflict with the District Court for the Western District of Virginia, in the case of *Junk* v. *R. J. Reynolds Tobacco Co.*, 24 Fed. Supp. 716, where the Court said, " * * * , and the right to sue a foreign corporation in the federal court wherein such corporation is doing business is not dependent upon permission given by the state."

> "Where a foreign corporation did not possess any property within the state and no officer or director of the corporation had residence in the state, the corporation was not 'doing business' in the State."

So stated the Court in *Bieber* v. *Englander Spring Bed Co. v. Higgins*, D.C. N.Y., 57 F. Supp. 717, 722. 18 N.Y. Supp. 3d

But in the instant case now before this Court, the director did have a residence in the "state" and was amenable to accept service under the District of Columbia Code. And in *Eastern Livestock Co-op Marketing Association* v. *Dickman*, CCA Va., 107 F. 2d 116, 118, the Court said,

> "Promotion of local trade by agent in behalf of foreign corporation, constitutes doing business in a state."

Appellant submits that the evidence presented in his brief indicating the type of activity carried on by the per-

son served, a director of the corporation, was sufficient to show that he was promoting local trade in behalf of the corporation.

Mere residence alone of the director, we submit, would not make the foreign corporation amenable to service here —but adding the residence and the activity of the director and the activities carried on by the corporation here, all coupled together, we pray here, should be sufficient to render the corporation "here" and "doing business" here for jurisdictional purposes under the D. C. Code, Title 13, Sections 103, 301 and 306.

Therefore, giving the weight that it did to the affidavit of Mr. Brady, the treasurer of the foreign corporation, the District Court for the District of Columbia Circuit, was in error, especially since in the *Junk* v. *R. J. Reynolds* case, *supra*, the court continued its decision stating. "For the purpose of suing and being sued in the Courts of the United States, a corporation, though an artificial person, is considered a citizen of the state of its creation—and a corporation of one state entering into another state by doing business there, can, in a proper case, sue or be sued in the courts of the latter state without express authority, and the corporations can only act through agents and service upon the corporation and can be only upon some individual who is the agent of the corporation. * * * I am constrained to hold as to a suit brought in this district against a foreign corporation doing business in this state and district, where service of process upon a designated statutory agent cannot be had, process may be had upon any agent of the corporation resident in the district."

The decision of the United States Court of Appeals in the instant case is also in conflict with the decisions rendered in its own Court all of which decisions will be mentioned in the argument and brief filed with this petition. The writ should be granted on both grounds set forth in the petition for the reasons herein stated.

## ARGUMENT AND BRIEF

### I. The Language of the District of Columbia Code, 1951-Title 13, Section 103 (24:373), Pertaining to Service on Foreign Corporations Is Worded in Such Fashion That the Plaintiff Below Was Correct, in Light of the Facts in the Instant Case, to Assume That the Service Made on the Director of the Foreign Corporation, Was Effectual Enough to Bring the Corporation Before the Court.

In *Frene* v. *Louisville Cement Co.*, 1943, 134 F. 2d 511, 77 U.S. App. D.C. 129, the Court of Appeals for the District of Columbia Circuit stated,

> "The fundamental principle underlying the 'doing business' concept, rendering foreign corporations amenable to process is the maintenance within the jurisdiction of a regular, continuous course of business activities, whether or not it includes the final contracting stage, and if, in addition to regular course of solicitation, other busines activities are carried on, the corporation is 'present' for jurisdictional purposes.
>
> "Solicitation, without these additional activities, or any of them, may be more sustained, more insistent, more productive of business than it is with them. Solicitation is the foundation of sales. Completing the contract is a mere formality when the stage of 'selling' the customer has passed. No business man would regard 'selling'—the taking of orders—'solicitation' as not 'doing business.' The merchant or manufacturer considers these things the heart of business. It is possible under the 'mere solicitation' rule, for a foreign corporation to confine its entire market to a single jurisdiction, yet by carefully limiting its activities there to the soliciting phase, to force each of its customers having cause for legal redress to seek it in the foreign forum of the incorporation. By careful segregation of the 'selling' phase in the place of market, a substantially complete immunity to liability, in the practical sense, could be created.
>
> "It would therefore seem that the 'mere solicitation' rule should be abandoned when the soliciting activity is a regular, continuous and sustained course of business, as it is in this case." *International Shoe Co.* v. *Lovejoy*, 1934, 219 Iowa 204, 257 NW 576.

"It constitutes, in the practical sense, both 'doing business' and 'transacting business' and should do so in the legal sense. Although the rule has not been clearly and expressly repudiated by the Supreme Court, its integrity has been much impaired by the decisions which sustain jurisdiction when very little more than 'mere solicitation' is done.

"In circumstances, such as we have here, the test of the agent's authority is not found, as defendant and trial court assumed, in the inquiry whether he is required to do the questioned act by formal instructions of the employer (principal) or his failure to do it would be a breach of duty to the employer. It is rather the nature of the act, its relation to the employer's modification of the original, formal instructions or impliedly by a course of conduct inconsistent with the limitations they impose . . . it was beneficial to both himself and his principal. If he performed it well, the necessary effect was to create good will for the defendant as well as for himself . . . * * * It was aiding with performance of the company's obligations. These things amount to more than creating good will and therefore more than 'mere solicitation.' "

Finally, the court in the *Frene* case, *supra*, exclaims:

"Section 13-103 of the D. C. Code is broad enough in its terms to include this case, unless such a construction is forbidden by controlling authorities. We do not think so . . . "

There the appellant feels that the circumstances noted in the cited case is his situation.

The case is brought to the attention of this Honorable Court to bring out the fact that the activities of the foreign corporation were more than mere solicitation as noted in appellant's brief before the Appeals Court (page 8) wherein a reprint from the *Washington Post*, page 23, of its August 1, 1952 issue, it offered to the Court for firm proof that the actions of the director served in the instant case, was, in fact, the agent of the foreign corporation, doing business in the District of Columbia, and not immune to

service as demanded by respondent in its motion to quash (app. brief, appendix page 4) and the affidavit attached thereto (appellee's brief, appendix page ).

In the *Junk* v. *R. J. Reynolds* case, *supra*, the Court cited the *Mass. Bonding and Insurance Co.* v. *Concrete Steel Bridge Co.* case, 37 F. 2d 695, which held that,

> "It is further held that, irrespective of where the cause of action arose, there could be no question that jurisdiction existed where the necessary diversity of citizenship was conceded and the suit brought in the district where the Plaintiffs resided."

Why therefore, should the Court of Appeals in the instant case, take an opposite view of good law, expounded under circumstances not unlike those, basically, as those presented by your petitioner?

Citing the U.S.C.A., Title 28, Sec. 777, R. S. Sec. 954, the Court in the same *Junk* ase, noted above, said,

> "No summons, writ, declaration, return, process, judgment or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed or reversed for any defect or want of form . . . * * * with further provision that same may be amended."

Petitioner therefore feels that the action of the District Court which was affirmed by the Court of Appeals for the District of Columbia Circuit was arbitrary and capricious since it could have, in the interest of justice, given petitioner the right to amend his pleadings in such fashion that his proof would have satisfied, as he tried to do, the court's contention that the allegations of fact were true and strong enough to maintain his action in the District of Columbia and not be forced to go to a jurisdiction foreign to the plaintiff in order to seek justice.

In the case of *Hyde* v. *Stone*, 20 How. 170, and *Smyth* v. *Ames*, 169 U. S. 466, 516, 18 S. Ct. 418 (42 L. Ed. 819), cited in the *Junk* case, *supra*, this Honorable Court stated,

> "The object of the provisions of the Constitution and statutes of the United States in conferring upon the circuit courts of the United States jurisdiction of controversies between citizens of one of the states and aliens, was to secure a tribunal presumed to be more impartial than a court of the state in which one of the litigants resides.
>
> "The jurisdiction so conferred upon the National courts cannot be abridged or impaired by any statute of a state."

With that in mind, how could the respondent dare ask the lower Court to agree with its thinking as to the contentions noted in the affidavit filed by Mr. Brady?

In *Frink* v. *Erickson*, CCA Mass., 20 F. 2d 707, the Court, in rendering its opinion, pointed out that,

> "In order to render a corporation amenable to service of process in a foreign jurisdiction, it must appear that that corporation was transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof.
>
> "If the presence of a foreign corporation in a state or district is once determined, jurisdiction of the court is not limited to contracts made within the state, but extends to causes of action arising outside of the state."

Your petitioner contends that proof was ready to be offered, but not allowed to be presented by the Court below, to indicate that contracts were made within the District to be performed both within and without the District by the foreign corporation, not only with your petitioner, but with other persons and firms, clearly indicating that said foreign corporation was "doing business" within the District of Columbia and therefore able to be served and brought before and under the jurisdiction of the United States District Court for the District of Columbia.

*Your petitioner's original action did arise out of an injury committed to him, as a result of a contract made with him, both within and without the jurisdiction of the Court below.*

In the same Frink case, supra, the court noted,

> "It has been said that the manifest injustice which would ensue if a foreign corporation permitted by a state to do business therein and to bring suits in its courts, could not be sued in those courts, and thus, while allowed the benefits, be exempt from the burdens of the laws of the state, has induced many states to provide by statute that a foreign corporation making a contract within a state shall appoint an agent upon whom process may be served in actions upon such contracts."

The District of Columbia Code, 1951 ed. Title 13, Sec. 103, reads:

> "In actions against foreign corporations doing business in the District of Columbia all process may be served on the agent of such corporation or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy, at the principal place of business in the District, or, if there be no such place of business in the District, by leaving same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.
>
> "When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of a tort, committed in the said District." (Mar. 3, 1901, 32 Stat. 544, ch. 1329; Feb. 1, 1907, 34 Stat. 874, ch. 445.)

In our own Court of Appeals, Justice Edgerton, in Whitaker v. McFadden Publications, 70 U.S. App. D.C., 16

citing *Philadelphia and Reading Railway Co.* v. *McKibbin*, 243 U.S. 264, 265, 37 S. Ct. 280, 61 L. Ed. 710, said:

> "A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is already there."

Petitioner, if he had been given the opportunity by the lower court, could have proven, that the conduct of the respondent was a well-shaped plan, not just casual and intermittent, but one of calculation and steady for more than ten years, all designed for the purpose of not mere solicitation of business from residents of the District of Columbia but in a manner we know as "solicitation-plus!"

Petitioner contends that due process of law was not afforded him under his Constitutional rights and the Courts below interpreted Rule 8(f) of the Federal Rules of Civil Procedure incorrectly.

## CONSTRUCTION OF PLEADINGS

In *Leimer* v. *State Mutual Life Assurance Co.* (CCA 8) 108 F. 2d 302, the Court said:

> "Under the liberal provisions of Rule 8(f) a complaint should not be dismissed unless it appears to a certainty that the plaintiff would be entitled to relief under no state of facts which could be proved in support of his claim."

and in *De Loach* v. *Crowley's* (CCA 5) 128 F. 2d 378, the court noted:

> "Pleadings are no longer construed strictly against the pleader, but only so as to do substantial justice."

Your petitioner therefore asks this Honorable Court to construe the action taken by the Court below in not allowing the petition for rehearing to take shape and have proof offered as an invasion of petitioner's right under the Constitution as previously noted, especially since the District of Columbia Code, 1951, provides under Title 13-301 (24:61) Writs, pleadings,

> "In all judicial proceedings the court, justice or judge, or before whom, the cause shall be pending shall have the power upon such terms as shall seem best, at any stage of the case, to allow amendments of writs, pleadings, or other papers in the cause and to allow supplemental or substituted affidavits to be filed." (Mar. 3, 1901, 31 Stat. 1252, ch. 854, Sec. 309; June 30, 1902, 32 Stat. 530, ch. 1329.)

If that provision of the Code had been followed, your petitioner would not be before this Honorable Court seeking this writ. The case would have been tried on its merits and no doubt would have resulted in a verdict for the plaintiff.

**II. District of Columbia Code, 1951—Title 11, Sec. 306 (18:44) General Jurisdiction.**

> "Said Court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said District and of all cases in law and equity between parties, both or either of which shall be resident or found within said District and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties. . . .

If this section had been construed properly by the Court below, with the facts before it, as outlined hereinbefore, it would have served to indicate that the petitioner had a right to file the suit as he did and where he did, without question.

**III. The Definition of a Director of a Corporation, as Propounded by the Courts as Well as Their Interpretation of an Agent in Connection With Corporate Activities Surely Indicate That the Lower Court's Ruling Was Incorrect.**

In *Webb* v. *Duvall*, 177 Md. 592, 597, the Court there stated:

> "The general principle is that a corporation acts through its directors . . . many of the courts regard the acceptance of the authority, where such authority is originally doubtful, defective or wanting."

In *Lynch* v. *Sapiro*, 176 A. 328, the Court said:

> "The directors of the corporation . . . men of prominence and probity in the community—were but nominal shareholders selected for their prestige, vulgarly called 'window-dressing' proud to be financiers and insensible of the part they were playing in the cupidity of others."

In *O'Loughlin* v. *O'Loughlin*, 6 N.J. 170, 78 A. (2d) 68, that tribunal decided that:

> "Ordinarily, a citizen of a state may go abroad for such remedies an relief as may be available in the jurisdiction of his choice; but a court of equity has the undoubted power to enjoin those subject to its jurisdiction from seeking relief in a foreign proceeding which would not be compatible with equity and right conscience. The restraint is directed against the litigants, not the foreign jurisdiction. It constitutes an exercise of equity's jurisdiction in personam operative upon those within the reach of the court's process * * *."

While in the case of *Leader Publishing Company* v. *Grant Trust*, 108 N.E. 21, it was determined that, "The officers of a private corporation have no franchise in their officers, they are merely representatives or agents of the corporation." Further, in *Pierce* v. *Hill*, 7 P. 2d, 201, 109 Cal. App. 742, the court said, "A Board of Directors

r trustees is the governing body of the corporation, * * * 'he Board is vested with the management of the corpo- ate affairs and the management, control and use of the roperty of the corporation." Putting it more bluntly, nd to the point, the Court in *Wannamaker* v. *Edisto Vational Bank*, CCASC 62 F 2d. 696, decided that "The unction of the director is to manage the affairs of the orporation in active management."

In *Lewis* v. *Amer. Savings etc. Assn.*, 73 N.W. 793, 98 Wisc. 203, the Court stated, "In the absence of statutory or other restraint, it is within the scope of the power of the directors to extend business of the corporation into another state."

We repeat what we said in our brief for the Court of Appeals, (page 18) "Is this not what Maryland State Fair, Inc. is guilty of? **We say, Yes!"**

We contend that the defendant did nothing to stop the director, agent, representative of the corporation from making the necessary soliciting speeches among the people of Washington and its visitors whom the defendant corporation was desirous of luring, enticing and soliciting, for the express purpose of coming to its establishment in the foreign jurisdiction to spend money and bet on the horses. We further contend, that this was a regular practice of the defendant, either by the luncheon gathering as noted in the newspaper column cited previously or through the advertising methods that petitioner was prepared to show as proof of the defendant's open and unimpeded manner of doing business in this jurisdiction.

In *Jones* v. *Williams*, 39 SW 486, 139 Mo. 1, 61 Am. S.R. 436, 37 L.R.A. 682, the court summed up the situation in one sentence:

> "The directors represent the artificial entity known as the corporation."

What then, was Mr. Garrett doing, but representing the corporation when he made that speech at the gathering on August 1, 1952? What then, was the plan the corporation was following, which petitioner attempted to show proof of, of doing things to indicate its "doing business" in the District?

This Court's ruling, we pray, should be re-studied wherein it is stated, that * * * Plaintiff made no sufficient showing that the defendant, a foreign corporation, was doing business here, or that the director was its agent under Title 13, Section 103, of the D.C. Code, (1951), even if all of the allegations of fact made by plaintiff are assumed to be true."

Plaintiff's allegations, which are true, noted both in the Court below and before this Court when this matter came on for oral argument, that

1. Corporation had been soliciting business over a constant and continuing period, spanning more than ten years; and that the solicitation was just one activity in this field, since it was coupled with

2. —free passes given to members of the working press including Walter Haight of the Washington Post, Joe Kelly of the Washington Star, and the racing editor of the Washington Daily News, newspapers of general circulation in the city of Washington, D. C., as well as the distribution of passes to several hundred persons in the city, including editors of copy who prepared news items for the radio and television stations in the area as well as well known public personalities in the advertising fields who could pass 'the good word' on to prospective customers of the 'track', and further that

3. —The bus lines, Capital Transit Co., Washington, Marlboro and Annapolis Bus Line, the Gray Line, all were afforded preferential treatment by reason of soliciting transportation to the defendant's track, by not being

charged any fee for parking on the track property while any operator of a private automobile was required to pay a parking fee if he came to the track to witness the races, even before he paid for his ticket of admission.

This alone, indicated that the defendant used an agent to bring passengers out to the track, while not paying them for the service rendered to them as such, gave them the "free" treatment since the carriers already were compensated by the passengers.

4. Plaintiff below was prepared to offer horse-owners who are residents of the District of Columbia, as witnesses to prove that contracts for the running of the residents' horses were consummated in the District of Columbia, therefore indicating that the defendant-appellee was doing business in the District of Columbia.

5. Plaintiff below was also prepared to prove the activities of the Levin Advertising Agency in connection with the business they transacted for and in behalf of the defendant-appellee with radio stations, television stations, newspapers, transit companies and other advertising facilities.

Petitioner therefore prays that all of the preceding information should have been acted upon and heard thoroughly by the Court below and allowed when the motion dismissing defendant's motion to quash was requested, especially in the light of the fact that in that petition, plaintiff expressed a desire to prove at the hearing, (a) that corporation was doing business in the District of Columbia through various and sundry methods and paid for services rendered unto it here in the District solely for the purpose of securing revenue from District residents, (b) that plaintiff be allowed to present proof of his answers filed.

Petitioner contends that the facts in his case, and the proof-giving which was denied to him, could have easily

proven that respondent was doing business in a continuous fashion and the activities other than solicitation were sufficient to make the defendant amenable to service here under the provisions of the D.C. Code.

In *Mills* v. *United Association of Journeymen, etc.*—8 FRD 300, the Court stated,

> "This Court looks to the substance rather than the form in pleading, and under Rule 8, of the Federal Rules of Civil Procedure, technicalities in pleadings are no longer of their former importance and a short statement which merely gives notice of the nature of the complaint is sufficient and under the Federal Rules, the complaint need only make a short and plain statement of facts upon which he relies to establish his claim."

Petitioner submits that he complied with the Rule and that this Honorable Court ought to allow him to have his day in court; air his grievances and allow his cause to proceed on its merits.

The United States District Court for the Southern District of New York, in deciding just such a question as presented here, in *Kerles Mfg. Co.* v. *Speidel Corp.*, 93 F. Supp. 483, said, "Motion to quash is denied. Applying the practical non-technical business standard, *U.S.* v. *Scophony Corp.*, 333 U.S. 795, 810, 68 S. Ct. 855, 92 L. Ed. 1091, defendant is doing business in this District. Its local activities are continuous and sufficient to satisfy the demands of due process; *Int. Shoe Co.* v. *State of Washington*, 326 U.S. 310, 317, 66 S. Ct. 154, 90 L. Ed. 95, it is not unreasonable to require defendant to defend suit in this District. * * * Motion to dismiss for improper venue is also denied. Continuous solicitation of business is itself "doing business" within the meaning of the venue provisions. *Kilpatrick* v. *Texas and P. Rwy Co.*, 2 Circ. 166 F. 2nd 788."

In *Trisna* v. *N.Y.C. and St. L. R. Co.*, District Court S.D. N.Y. 57 F. Supp. 485, the court stated:

"* * *

"The application of the law to the facts is not free from doubt. Solicitation alone, the authorities say, do not constitute 'doing business' (citing cases) page 485. But, very little addition to solicitation is sufficient. Wood v. Delaware and H.R. Co., 2 Cir. 1933, 63 F2d 235; Schilling v. Hudson and Delaware R. Co., 2 Cir. 1940, 114 F. 2nd 69; Frene v. Louisville Cement, etc., 1943, 77 U.S. App. D.C. 129, 134 F. 2d 511; Jacobwitz v. Thomson, D.C.S.D.N.Y. 1943, 3 F.R.D. 471."

In our own Court, Judge Prettyman, speaking for the Court in *Mueller Brass Co.* v. *Milburn*, 80 App. D.C. 274, citing the *Frene* case (*supra*) said, "This court held that such solicitation plus other activities was sufficient to constitute the doing of business."

Judge Washington, writing for the Court in *Goldberg* v. *Southern Builders*, 87 Appeals D.C. 191, stated:

"This statute, like analogous laws in many states, is remedial in purpose. Its object is quite clear—it is to enable the District of Columbia courts to exercise jurisdiction over foreign corporations which engage in business activities in the District. The law as to when foreign corporations are subject to suit outside their state of incorporation was for a long time possessed of a mystic quality which had evolved from the piling of additional fictions upon the base of the original corporate fiction. As a result corporations were able to engage in activity in many states and yet all too often escape liability for such activity because they could not be sued in local forums. Such statutes as the one here involved were enacted in consequence. They rest upon the concept that when a foreign corporation does certain acts within a state (or, here, in the District of Columbia), there are sufficient contacts with that state, to give its courts, upon proper service of process, personal jurisdiction

over that corporation. * * * International Shoe Co. v. State of Washington, 326 U.S. 310, 316-319, 66 S. Ct. 154, 90 L. Ed. 95, 161 A.L.R. 1057.

"In general, doing business means continuous, systematic activity. Specifically, in relation to jurisdiction of local courts, it means 'some continuous dealings in the state of the forum; enough to demand a trial away from its home.'"

"Generally, one is 'doing business' when he is engaged in activities for the purpose of continued efforts in pursuit of profit and or gain and such activities are essential to those purposes." People v. Jones, 16 N.Y.S. 2d, 558, 559, 172 Misc. 368.

Petitioner claims to have proven that such was the case with reference to the activities of the appellee here.

In *Weinstein et al.* v. *Ajax Distributing Co.*, Municipal Court of Appeals, D.C.—case No. 1661, decided August 26, 1955 and reported in Wash. Law Reporter, Vol. LXXXIV, page 10, the syllabus notes:

"Developments in the law on the subject of amenability to service of process of foreign corporations doing business in the District of Columbia have undergone an evolution. While it is generally true that there should be more than merely casual or occasional acts, not constituting a regular or continuous course of business, still some casual or even single acts done within the borders of the sovereignty may confer power to acquire jurisdiction of the person, provided there is also reasonable provision for giving notice of the suit in accordance with minimal due process requirements. D.C. Code 13-103, (1951) cited or construed."

Petitioner contends the respondent did commit acts which made it amenable to service of process, as noted herein previously and noted in appellant's brief, and that the service upon the director of the defendant corporation was good service under the rule laid down in the

cases cited previously, and since the appellant-plaintiff below had a transitory action, his choice of a forum should have been allowed, and not disturbed, under the decision rendered in this Court by Judge Danaher in *Blake et al.* v. *Capitol Greyhound*—U.S. App. D.C., F. 2nd, D.C. Cir. 1955, 83 Wash. Law Rep. 1059, No. 12,098, decided January 13, 1955.

It would therefore seem to be reasonable to assume that the wording used by the Court in the *Frene* case, *supra*, citing *International Shoe Co.* v. *Lovejoy*, 1934, 219 Iowa 204, 257, NW 576, that—". It would therefore seem that the 'mere solicitation' rule should be abandoned when the soliciting activity is a regular, continuous and sustained course of business, as it is in this case." —is the prevailing law in this jurisdiction, and by ruling against your petitioner in the instant case, the United States Court of Appeals for the District of Columbia Circuit has made an about face and turned against itself and refuses to recognize its own ruling as one that is proper and correct. One need go no further than the daily newspapers of general circulation in the District of Columbia, of which this Court, we pray, should take historical notice, that the promotion of that "Washington International Horse Race, is still being exploited in the District of Columbia, now, even this day, four years after the occurrence of your petitioner's accident. This yearly event, is but one indication that your petitioner attempted to enlarge on to show how the respondent was "doing business" in the District of Columbia and therefore was amenable to service in the manner described by the petitioner hereinbefore.

## CONCLUSION

Petitioner contends that he has complied with the Federal rules noted and has complied with the interpretation of the District of Columbia Code pertaining to the conditions under which a foreign corporation can be brought into this jurisdiction to answer for a wrong done to a

page 22a

In the *Blake et al* v. *Capital Greyhound case, supra*, the Court pointed out: not only that . . . "This is a transitory tort action as to which the District Court may take jurisdiction." D.C. Code, Sec. 11-306 (1951), *Guilford Granite Co.* v. *Harrison Granite Co.*, 23 App. D.C. 1, 19-20 (D.C. Cir. 1903), 31 Wash. Law Rep. 759. but * * * In the 1948 Judicial Code, a new and broader power was conferred upon the district courts, in verba: "For the convenience of parties and witnesses, *in the interest of justice*, a district court may transfer any civil action to any other district or division where it might have been brought."[1] (Emphasis supplied.) " . . . As enacted, the legislation provides for a change of venue rather than for dismissal of the suit . . . " *Burgess* v. *Proctor and Gamble Defense Corp.*, 172 F. (2d) 541, 542 (5th Cir. 1949).

Your petitioner contends, in the *interest of justice*, the motion to quash should have been refused and the action transferred.

Respondent took advantage of petitioner's time running out since the injury occurred on April 12, 1952 and the action commenced April 7, 1955. After the statute of limitations had run out for petitioner to file his suit in Maryland—if he was forced to—then the District Court here decided to quash the service made. Thus—in the "*interest of justice*" your petitioner was without a source of relief—yet the Code provided for just such a situation, but evidently not for the instant petitioner as the lower court held.

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[1] 28 U.S.C. Sec. 1404(a)—(1952)

citizen of this jurisdiction, especially when it has been shown, beyond the shadow of a doubt, that the foreign corporation is doing business in the district and was served properly through a proper representative of the defendant foreign corporation.

As for not allowing counsel the opportunity to prove his statements by irrefutable evidence, this in itself is reversible error.

Upon the whole case, the petitioner respectfully submits that the lower court erred in not allowing him to offer proof of his remarks concerning the fact that defendant *was* doing business in the District of Columbia and that service on the said director, Mr. George Garrett, was proper.

Petitioner
~~Respondent~~ respectfully submits that the lower court erred by refusing to face facts known to the world, through published newspaper accounts of the activities of the defendant in the District of Columbia and further asks this Honorable Court to question the lower court's naivity in closing its eyes to facts known to the public at large and should be known to the lower court as to the conduct of the respondent and its agents in the District of Columbia, going on for many, many years.

Petitioner submits this action should be returned to the lower court with the decision that respondent is doing business in the District of Columbia; that service on George Garrett was proper and the case heard on its merits allowing petitioner opportunity to present facts in order to prove his contentions with proper evidence, all in the interest of fair play and justice.

Respectfully submitted,

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*Attorney for Petitioner.*

# APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12830

JOSEPH S. GRIMES, APPELLANT,

v.

MARYLAND STATE FAIR, INC., APPELLEE.

Appeal from the United States District Court
for the District of Columbia

## Opinion

Decided March 1, 1956

*Mr. I. William Stempil* for appellant.

*Mr. Randolph C. Richardson,* with whom *Messrs. Charles E. Pledger, Jr.* and *Justin L. Edgerton* were on the brief, for appellee.

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

PER CURIAM: Plaintiff-appellant brought suit in the District Court for personal injuries sustained on defendant corporation's premises in Laurel, Maryland. Process was served in the District of Columbia on a director of the corporation whose residence is here. Defendant's motion to quash service was granted by the District Court. This appeal followed.

On the basis of the record made at the hearing, the action of the District Court was clearly correct. Plaintiff made no sufficient showing that the defendant, a foreign corporation, was doing business here, or that the

director was its agent, under Title 13, Section 103 of the D. C. Code (1951), even if all the allegations of fact made by plaintiff are assumed to be true.

*Affirmed.*

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,830

JANUARY TERM 1956

JOSEPH S. GRIMES, APPELLANT,

v.

MARYLAND STATE FAIR, INC., APPELLEE.

Before: Edgerton, Chief Judge, Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges, in Chambers.

**Order**

Upon consideration of appellant's petition for a rehearing in banc, it is

ORDERED by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: March 26, 1956

**Statutes Involved**

DISTRICT OF COLUMBIA CODE, 1951—Title 13, Section 103 (24:373). Service on Foreign Corporations.

"In actions against foreign corporations doing business in the District of Columbia all process may be

served on the agent of such corporation or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy, at the principal place of business in the District, or, if there be no such place of business in the District, by leaving same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.

"When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of a tort, committed in the said District." (Mar. 3, 1901, **32 Stat. 544, ch. 1329**; Feb. 1, 1907, 34 Stat. 874, ch. 445.)

DISTRICT OF COLUMBIA CODE, 1951—Title 13-301 (24:61). Writs, pleadings, and other papers amenable at any stage, on terms—supplemental or substituted affidavits permitted.

"In all judicial proceedings the court, justice or judge, or before whom, the cause shall be pending shall have the power upon such terms as shall seem best, at any stage of the case, to allow amendments of writs, pleadings, or other papers in the cause and to allow supplemental or substituted affidavits to be filed." (Mar. 3, 1901, 31 Stat. 1252, ch. 854, Sec. 309; June 30, 1902, 32 Stat. 530, ch. 1329.)

DISTRICT OF COLUMBIA CODE, 1951—Title 11, Sec. 306 (18:44) General Jurisdiction.

"Said Court (except as otherwise provided in this title) shall have cognizance of all crimes and offenses committed within said District and of all cases in law and equity between parties, both or either of which shall be resident or found within said District and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be

plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States." (R. S. D. C. Sec. 763; Feb. 27, 1877, 19 Stat. 253, ch. 69, Sec. 2.)

28 U.S.C.A. Sec. 77, Sec. 954.

Title 28 U.S.C.A. Sec. 777, R.S. Sec. 954.

"No summons, writ, declaration, return, process, judgment or other proceedings in civil causes, in any court of the United States, shall be abated, arrested quashed or reversed for any defect or want of form, . . . with further provision that same may be amended."

Title 28 U.S.C.A. Sec. 1391, Chapter 87-(c).

A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

31/23

Office - Supreme Court, U.S.
FILED
SEP 22 1956
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. 348

JOSEPH S. GRIMES, *Petitioner,*

v.

MARYLAND STATE FAIR, INCORPORATED, *Respondent*

## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

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No. 348

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JOSEPH S. GRIMES, *Petitioner*,

v.

MARYLAND STATE FAIR, INCORPORATED, *Respondent*

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## BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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### OPINION BELOW

Opinion, United States Court of Appeals for the District of Columbia Circuit, dated March 1, 1956, 230 F. 2d 825. (Appendix 1a)

## THE PETITION DOES NOT SET FORTH SUFFICIENT GROUNDS FOR THE GRANTING OF A WRIT OF CERTIORARI

This case involves the validity of service of process upon a foreign corporation. The statute involved, as hereinafter set forth, is Title 13, Sec. 103, District of Columbia Code, 1951 Edition (24:373). The question involved is one of local law and does not present any federal question or any question of public or general importance. The United States Court of Appeals for the District of Columbia correctly decided the question. This Court does not ordinarily review decisions of the aforementioned Court of Appeals which are based on local statutes, and sound judicial policy and administration requires that the determination of local law in the District of Columbia be left to its Court of Appeals. Accordingly, the petition does not set forth sufficient grounds for the granting of a writ of certiorari.

## APPLICABLE STATUTE

The applicable statute is Title 13, Sec. 103, District of Columbia Code, 1951 Edition, pages 459 and 460, (24:373), which provides as follows:

> § 13-103 (24:373) SERVICE ON FOREIGN CORPORATIONS.
>
> In actions against foreign corporations doing business in the District all process may be served on the agent of such foreign corporation or person conducting its business, or, in case he is absent and cannot be found, by leaving a copy at the principal place of business in the District, or, if there be no such place of business, by leaving the same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.

When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the said District. (Mar. 3, 1901, 31 Stat. 1419, ch. 854, § 1537; June 30, 1902, 32 Stat. 544, ch. 1329; Feb. 1, 1907, 34 Stat. 874, ch. 445.)

## QUESTION PRESENTED FOR REVIEW

In the opinion of the respondent the question presented for review is:

In a tort action for alleged personal injuries sustained in Maryland, brought by a resident of the District of Columbia against a Maryland corporation, in the United States District Court for the District of Columbia, will service of process in the District of Columbia upon merely a *director* of the Maryland corporation, who resides in the District of Columbia, subject the Maryland corporation to the jurisdiction of the United States District Court for the District of Columbia, if upon hearing on a Motion to Quash such Service it was established that the Maryland corporation was not doing business in the District of Columbia within the provisions of the applicable statute at the time of the alleged accident.

## STATEMENT OF CASE

Service of process herein was made in the District of Columbia by personal service upon merely a *director* of the respondent corporation. Thereafter respondent filed its Motion to Quash Service of Process. (R. 4). Grounds for this Motion were that: Respondent is

a corporation organized and existing under and by virtue of the laws of the State of Maryland; it does not have an office or place of business in the District of Columbia; it has its offices in the State of Maryland and does and transacts its business in that state; and that at the time of service of summons upon George A. Garrett, one of its directors, it was not doing business in the District of Columbia within the contemplation of Title 13, Section 103, pages 459 and 460 of the District of Columbia Code, 1951 Edition, providing for service on foreign corporations. Attached to, made a part of, and in support of this motion was an affidavit of Mr. Frank J. Brady, Treasurer of respondent. (Appendix 2a) Respondent also filed its Memorandum of Points and Authorities in Support of its Motion to Quash Service of Process which, although required by Rule 9(b) of the District Court, is not a proper part of the record.

Despite Rule 9(b) of the District Court, petitioner did not file a Memorandum of Points and Authorities in Opposition to respondent's Motion, but instead, filed his Motion to Dismiss respondent's Motion to Quash Service of Summons. (R. 5) Although petitioner filed Points and Authorities in support of his aforementioned Motion, he did not file any affidavit to overcome aforementioned affidavit of Mr. Brady, treasurer of respondent.

Hearing on these Motions resulted in the issuance of an order of the District Court quashing service of process and the summons issued thereon. Petitioner then filed his Motion for Rehearing, and his supporting Points and Authorities, in answer to which respondent filed its Memorandum of Points and Authorities in Opposition to petitioner's Motion for Rehearing.

Thereafter, in accordance with Rule 9(f) of the District Court, an order denying petitioner's Motion for Rehearing was issued by that Court.

Subsequently, petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit, which appeal resulted in that Court affirming the action of the District Court. Finally, petitioner filed his petition for rehearing by aforementioned Court of Appeals, which was denied.

## ARGUMENT

### 1. The petition does not set forth sufficient grounds for the granting of a writ of certiorari

This case involves the validity of service of process upon a foreign corporation under the provisions of the applicable statute. This statute is a law of the District of Columbia, only, therefore the question is not a federal question or one of public or general importance. The United States Court of Appeals for the District of Columbia Circuit held that the service of process was not valid under the provisions of aforementioned statute. The following decisions indicate that determinations of that Court in cases such as this are not ordinarily reviewed by this Court:

In *Del Vecchio* v. *Bowers*, 296 U.S. 280, 285, involving a case decided by the United States Court of Appeals for the District of Columbia Circuit, this Court (Mr. Justice Roberts) stated:

> "We will not ordinarily review decisions of the United States Court of Appeals, which are based upon a statute so limited or which declare the common law of the District."

In *Fisher* v. *United States*, 328 U. S. 463, 476, this Court (Mr. Justice Reed) stated:

> "Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere. District of Columbia v. Pace, 320 U. S. 698, 702; Busby v. Electric Utilities Union, 323 U. S. 72, 74-5."

With reference to jurisdiction to bring up cases by certiorari:

In *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163, this Court (Mr. Justice Taft) stated:

> "The jurisdiction to bring up cases by certiorari from Circuit Court of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. This jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing."

In *In Re Woods*, 143 U. S. 202, this Court (Mr. Justice Fuller) stated:

> "* * * 'that the discretion vested in the Supreme Court to review decisions by certiorari will only be exercised in matters of gravity and general importance.'"

**2. The United States Court of Appeals for the District of Columbia Circuit made a correct determination of the local statutory law in this case.**

The complaint alleges a tort committed in the State of Maryland. The respondent is a Maryland corporation.

The applicable statute provides in substance: that in actions against foreign corporations *doing business*

*in the District* process may be served on the agent of such corporation or person conducting its business in the District of Columbia, or, in case he is absent or cannot be found, by leaving a copy at the principal place of business in the District, or if no such place of business, by leaving the same at the place of business or residence of such agent in said District. This provision further provides that when a foreign corporation *shall transact business in the District* without having any place of business or resident agent therein, service upon any *officer, agent or employee of such corporation* in the District shall be effectual as to suits growing out of contracts entered into or to be performed in whole or in part, in the District, *or growing out of any tort committed in said District.*

Service herein was made in the District of Columbia upon Mr. George A. Garrett, *a director, only, of respondent.* As a part of respondent's motion to quash service of process there was included the affidavit of Mr. Frank J. Brady, treasurer of respondent, in support of this motion. (Appendix 2a) Summarily, this affidavit states that: respondent corporation was organized and is existing under the laws of the State of Maryland; its principal offices are at Laurel, Maryland; the corporation maintains an office in Baltimore, Maryland; the corporation does not have an office or place of business in the District of Columbia, nor does it conduct any business in the District of Columbia, or do any banking or have any banking facilities in this District; the only business of respondent corporation is the operation of the Laurel Race Track; George A. Garrett upon whom the summons and complaint were served is only a director, he is not an employee or officer, or managing or general agent of respondent, and Mr. Garrett is not an agent of

respondent authorized by appointment, or by law, to receive and accept service of process on behalf of respondent.

Rule 9 (b) of the District Court provides as follows:

> "(b) Points And Authorities; Entry of Motion, Etc.; Failure To File Opposing Points And Authorities; Oral Hearings. With each motion there shall be filed and served a separate paper stating the specific points of law and authorities to support the motion. Such statement shall be additional to a statement of grounds in the motion itself, and shall be entered on the docket but shall not be a part of the record. The moving party shall enter the motion and the fact of filing the statement on a card provided by the clerk. A statement of opposing points and authorities shall be similarly filed, noted and served within five days or such further time as the court may grant or the parties agree upon. If not filed within the prescribed time the court may treat the motion as conceded. If so filed the motion shall be treated as submitted unless the judge directs or either party requests an oral hearing, for which ten minutes will be allowed each side."

Despite the provisions of this rule, petitioner did not file any affidavit opposing that of Mr. Brady, nor did he offer, or was he precluded from offering, during the hearing before the District Court, or in support of his motion for rehearing in the District Court, any evidence to refute or overcome Mr. Brady's affidavit.

Rule 9 (f) of the United States District Court for the District of Columbia provides:

> "9(f) Oral Hearing; When Not Allowed. An oral hearing will not be allowed, unless directed by the court, upon a motion to rehear, or to vacate,

> stay or modify an order or judgment or for a new trial, or for any order after trial relating to a verdict, judgment, finding of fact or conclusions of law."

The District Court acted in accordance with this rule, in denying petitioner's Motion for a rehearing in that Court.

Therefore, the actions of the District Court and the Court of Appeals were clearly correct in granting respondent's motion to quash service of process.

Reference is made to *Whitaker* v. *McFadden Publications, Inc.*, 70 App. D. C. 165, 105 F. 2d 44, wherein a complaint involving a claim for an alleged libel was filed against a foreign corporation. The United States Court of Appeals for the District of Columbia affirmed the order of the District Court quashing the service of process, holding:

> " 'A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there.' *Philadelphia & Reading Railway Co.* v. *McKibbin*, 243 U. S. 264, 265, 37 S. Ct. 280, 61 L. Ed. 710."

Regarding service of process upon a director of a foreign corporation within a jurisdiction wherein the foreign corporation is not doing business, further reference is made to the following cases:

In *Toledo Railways & Light Company* v. *Walter L. Hill et al*, 244 U. S. 49, wherein service was made upon the director of a foreign corporation, this Court held that the service upon the director was not a good service stating:

> "So far as concerns the capacity of the person upon whom the summons was served irrespective of the doing of business by the corporation in the state, we do not expressly notice the various contentions by which, under such a view, jurisdiction is sought to be supported, but content ourselves with saying that we think they are all plainly without merit."

In *United Shoe Machinery Corporation* v. *Becker, et al*, 51 F. Supp. 802, wherein service was made upon a director of a foreign corporation, the motion to quash, vacate and set aside such service was granted.

In *Reilly* v. *Philadelphia R. Ry. Co.*, 109 F. 349, after considering certain Supreme Court of the United States decisions cited therein, the Court stated the following with reference to the general law applicable to corporations:

> "Upon these authorities it must be held that service of process upon a mere director who is found within the District, but who neither transacts any corporate business here, nor is charged with any business of the corporation, would not under the general law be sufficient service upon the corporation."

Accordingly, the record, evidence, and law of this case clearly establish that neither the District Court nor the Court of Appeals erred, or abused their discretionary powers. Furthermore, petitioner was accorded full opportunity by the District Court to introduce any and all admissible evidence he could submit. He overlooks the fact that he did not, within the ample time permitted to him by the District Court, submit, introduce, or offer to submit or introduce, any admissible evidence concerning the matters referred to on pages 17 and 18 of his Petition for Writ of Certiorari.

**3. The record herein does not disclose any request of petitioner to transfer this cause to another court.**

There is nothing in the records of this case in the District Court or the Court of Appeals pertaining to or requesting that the case be transferred to another court. Furthermore, it is elementary that the District Court could not have transferred the case, because it did not have jurisdiction over the respondent foreign corporation.

Attention is invited to the following cases in connection therewith:

In *Fistel et al* v. *Beaver Trust Co. et al*, 94 F. Supp. 974, 976, the Court stated:

> "We are here concerned with jurisdiction over the person, i.e., valid service on an existing party. The action cannot be transferred to Pennsylvania, as plaintiff requests, because this court has no jurisdiction over the defendant executors. Henderson v. Shell Oil Co., 8 Cir., 173 F.2d 840."

In *Cogburn* v. *MacFadden Publications, Inc.*, 129 F. Supp. 535, 537 wherein invalidity of service of process and transfer of the cause under the doctrine of forum non conveniens was involved, the Court stated:

> "It (forum non conveniens) applies only to cases of which the Court has jurisdiction. It does not abrogate the law regarding service of summons * * * "

## CONCLUSION

The petition does not set forth sufficient grounds for the granting of a writ of certiorari because: this case involves a question concerning a local statute of the District of Columbia, only, and does not present

any federal question or question of public or general importance; and decisions indicate that determinations of the United States Court of Appeals for the District of Columbia Circuit on statutes of this District are not ordinarily reviewed by this Court.

The service of process upon the mere director of the respondent foreign corporation should have been, as it was, quashed because: the record and evidence herein establish that the respondent is a foreign corporation not doing or transacting business in the District of Columbia, and that the tort complained of was not committed in the District of Columbia. In addition, under Title 13, Section 103, District of Columbia Code, 1951 Ed., valid service of process cannot be made upon a *mere director* of a foreign corporation.

There is nothing in the records of this case in the District Court or the Court of Appeals pertaining to or requesting that the case be transferred to another court. Furthermore, the District Court could not have transferred the case because it did not have jurisdiction over the respondent foreign corporation.

It is respectfully submitted and requested that the petition for writ of certiorari be denied.

Respectfully submitted,

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*Counsel for Respondent*

*Of Counsel:*

JUSTIN L. EDGERTON
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## APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12830

JOSEPH S. GRIMES, APPELLANT,

v.

MARYLAND STATE FAIR, INC., APPELLEE.

Appeal from the United States District Court for the District of Columbia

Decided March 1, 1956

*Mr. I. William Stempil* for appellant.

*Mr. Randolph C. Richardson*, with whom *Messrs. Charles E. Pledger, Jr.*, and *Justin L. Edgerton* were on the brief, for appellee.

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

PER CURIAM: Plaintiff-appellant brought suit in the District Court for personal injuries sustained on defendant corporation's premises in Laurel, Maryland. Process was served in the District of Columbia on a director of the corporation whose residence is here. Defendant's motion to quash service was granted by the District Court. This appeal followed.

On the basis of the record made at the hearing, the action of the District Court was clearly correct. Plaintiff made no sufficient showing that the defendant, a foreign corporation, was doing business here, or that the director was its agent, under Title 13, Section 103 of the D. C. Code (1951), even if all the allegations of fact made by plaintiff are assumed to be true.

*Affirmed.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action

File No. 1574-55

JOSEPH S. GRIMES, *Plaintiff*,

v.

MARYLAND STATE FAIR, INCORPORATED, *Defendant*.

**Affidavit of Frank J. Brady in Support of Motion of Defendant to Quash Service of Process**

STATE OF MARYLAND )
COUNTY OF PRINCE GEORGES ) ss:

I, Frank J. Brady, being first duly sworn on oath depose and say that I am Treasurer of Maryland State Fair, Inc., named as defendant in the above entitled cause; that Maryland State Fair, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Maryland; that the principal offices of said corporation are at Laurel, Maryland, the post office address being Box 30; that said corporation maintains an office at No. 2 Commerce Street, Baltimore, Maryland; that said corporation does not have an office or place of business in the District of Columbia; that said corporation does not do any business in the District of Columbia; that said corporation does not bank or have banking facilities in the District of Columbia; that the only business of said corporation is the operation of the Laurel Race Track; that George A. Garrett upon whom the summons and complaint was served in this cause on April 11, 1955, at 719 Fifteenth Street, Northwest, Washington, D. C., is only a director of said corporation; that Mr. Garrett is not an employee or officer of said corporation; that Mr. Garrett is not a managing or general agent of said corporation and that Mr. Garrett is not an agent of said corporation authorized

by appointment or by law to receive and accept service of process on behalf of said corporation.

/s/ FRANK J. BRADY
Frank J. Brady

Subscribed and sworn to before me this 27 day of April, 1955.

/s/ A. LESTER BATIE
*Notary Public in and for the State of Maryland*

(NOTARIAL SEAL)